



The State of New Hampshire
DEPARTMENT OF ENVIRONMENTAL SERVICES



Thomas S. Burack, Commissioner

January 3, 2008

The Honorable Judith Spang, Chairman
Resources, Recreation and Development Committee
Legislative Office Building, Room 305
Concord, New Hampshire 03301

Re: HB 1535, relative to establishing a factual data base for wetland decision accountability.

Dear Chairman Spang:

Thank you for the opportunity to comment on HB 1535, which would require the Department of Environmental Services (DES) to produce a numerical standard of performance by which jurisdictionally protected wetlands can be identified in the State of New Hampshire. The DES does not support this bill for the reasons explained below.

DES and wetlands scientists who work in New Hampshire have long used the three parameter approach developed by the US Army Corps of Engineers (ACOE) for the identification and delineation of jurisdictional wetlands. Under this approach, site hydrology, plants and soil types are considered based on objective criteria to determine if a specific area is or is not jurisdictional wetlands. This approach, which is based upon nationally-accepted science and professional practice for wetlands delineation, allows the DES to issue decisions on dredge and fill applications that are understandable, defensible and consistent.

HB 1535 requires DES to produce a standard of performance for wetlands identification using the "Method for Comparative Evaluation of Nontidal Wetlands of New Hampshire, 1991." This document was authored by Dr. Alan Ammann of the USDA Soil Conservation Service and Ms. Amanda Stone of the Audubon Society of New Hampshire and is published by DES. As clearly stated in the document introduction, it is intended for "planning, education, and wetlands inventory purposes and not for detailed impact analysis on individual wetlands." In general terms, the document was developed to help communities identify the relative value of wetlands for local planning purposes, such as providing additional protection to sensitive areas. For example, this method could be used to assist a community to identify areas for consideration for local designation as prime wetlands. The introduction also clearly explains the differences between wetlands evaluation for planning purposes and wetlands delineation for regulatory purposes to ensure the document is used appropriately. DES is concerned that HB 1535 would require us to develop a regulatory standard that conflicts with the expressed intent of the document that we would be required to use for standard development.

Finally, DES has serious concerns that implementation of a new method for wetlands identification would jeopardize the New Hampshire State Programmatic

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General Permit (SPGP), as issued by the ACOE. The SPGP provides significant advantages to municipalities and permit applicants by incorporating federal requirements into state permits, thus eliminating the need for a separate federal permit for smaller projects. The SPGP requires that New Hampshire's wetlands program be consistent with the federal program. We are concerned that this might not still be the case if a new process for wetlands identification were to be implemented such as proposed by HB 1535.

Thank you for this opportunity to comment on this bill. Please feel free to call me at 271-3503, or Collis Adams at 271-4054, if you have any questions or need additional information.

Very truly yours,


for Thomas S. Burack
Commissioner

cc: Representative Camm